IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 28171 of 2007(D)

OS.404/2003 of MUNSIFF COURT, PARAVUR
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PETITIONER:

BANK OF INDIA,
PALLIPPURAM BRANCH,
REP.BY ITS MANAGER.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

RESPONDENT:

RANI PAULOSE @ FRANCISCA, W/O.PAULOSE,
ACHARUPARAMBIL HOUSE, VI/182 A (OLD),
PALLIPPURAM VILLAGE, KOCHI TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.28171 of 2007

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Dated this the 24th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P2 order whereby the Munsiff, North Paravur had dismissed the execution application. Learned counsel for the writ petitioner submits that the Bank had taken all the steps for conducting the auction and during the final stage of the matter, the Bank wanted some time to get advice from the Head Office for filing the application to participate in the auction as a decree holder. The court below was not inclined to grant time and simply rejected the execution petition.

2. The disposal of the case is not under Order 21 Rule 105 of C.P.C. and therefore, there is no question of application under Order 21 Rule 106 of C.P.C. and no statutory limitations for filing the same. This Court in the decision reported in **Radhakrishnan** v. **State of Kerala** - 2006(1) K.L.T. 28 held that in such cases,

the court has always power to invoke Section 151 of C.P.C. to render justice to the party and there is no period of limitation for filing such application. From the submissions made by the learned counsel for the writ Petitioner, I am satisfied that the Bank has been prosecuting the matter diligently.

3. Therefore, I direct the writ petitioner to file an application for restoration before the court below under Section 151 of C.P.C. and taking into consideration the broad principles and promptness of the Bank in prosecuting the matter, I direct the court below to consider the restoration application sympathetically and dispose of the matter in accordance with law.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

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